IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

THE HONOURABLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO.6696 OF 2007

DATED 11-04-2007

BETWEEN

Appam Sudershan and another

.. PETITIONERS

And

The Chair Person,
The Andhra Pradesh Women's Commission,
II Floor, Budha Bhavan, Secunderabad
and 3 others.

THE HONOURABLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO.6696 OF 2007

Oral Order:

This writ petition presents a delicate and sensitive issue, which is not amenable to adjudication on the ordinary principles of law.

Respondents 2 and 3 are the natural parents of a girl child by name Vaishnavi, born on 12.3.2005. The petitioners allege that on account of the relationship between themselves and respondents 2 and 3, the child was given in adoption to them three days after the birth. A ceremony of adoption is also stated to have been taken place.

Respondents 2 and 3 filed a complaint before the 1st respondent - A.P.Women's Commission, (for shot 'the Commission') alleging that the petitioners visited their house on 22.12.2006 and took the child, promising to return her on the next day itself, but failed to return the child. Several other allegations were made, and ultimately they prayed for the return of the custody of the child to them.

The Commission entertained the complaint and issued summons to the petitioners herein. The parties appeared on 28.3.2007 and 29.3.2007 before it and the Commission directed that the custody of the child be restored to respondents 2 and 3.

In this writ petition, the petitioners challenge the action of the Commission in directing the custody of the child to respondents 2 and 3. They plead that the Commission does not have the jurisdiction to entertain the complaint since none of the ingredients of the A.P.Women Commission Act, 1998 are attracted and at any rate the custody was directed without hearing the petitioners and without passing any reasoned order. Several subsidiary contentions are also advanced.

At the stage of admission, a counter affidavit is filed by the Chairperson of the Commission narrating the circumstances under which the custody of the child was restored to respondents 2 and 3. It is stated that when the petitioners, together with the child and respondents 2 and 3 appeared before the Commission, the views of the child were ascertained and the custody was restored to the natural parents according to the wish expressed by the child. Various allegations made by the petitioners are denied. Objection is taken to some of the statements made in the affidavit.

Sri A.K.Kishore Reddy, learned counsel for the petitioners

submits that the child was given in adoption to his clients and if respondents 2 and 3 wanted to raise any dispute, the only course open to them was to approach the Civil Court for necessary relief. He submits that the 1st respondent has no jurisdiction to entertain and adjudicate such complaints involving question of adoption. He submits that even otherwise, the Commission did not choose to give an opportunity to the petitioners to put forward their case, much less did it pass any reasoned order, before an important step, like handing over the custody of the child to respondents 2 and 3 was taken.

The learned Government Pleader for Women Development and Child Welfare submits that the powers of the Commission are wide enough to decide the matters of this nature. She contends that the Commission did not undertake any adjudication on 29.3.2007. She submits that the child was permitted to be with the natural parents as per the wishes expressed by her. It is also stated that the matter is still pending adjudication, before the Commission.

Sri D.Prakash Reddy, learned senior counsel appearing for respondents 2 and 3 submits that the petitioners have created fake certificates and that the child was not given in adoption, to the petitioners. He contends that when the custody of the child is restored to the natural parents, no illegality can be said to have been taken place and that if the rights of the parties are to be adjudicated in a proper forum, it is in the interest of the child that the custody is with the natural parents.

There is serious dispute among the parties as to whether the child by name Vaishnavai was given in adoption to the petitioners herein. The petitioners and respondents 2 and 3 are related to each other. As of now, no deed of adoption is produced before this Court.

By its very nature, any dispute touching upon the adoption and custody of a child needs to be adjudicated by a Court of competent jurisdiction by applying the provisions of Hindu Adoptions and Maintenance Act, 1956. Evidence, related to the issue, needs to be recorded. Inasmuch as the natural parentage vis-a-viz of respondents 2 and 3 is not disputed, it is for the petitioners to work out their remedies by seeking relief of declaration etc., in a competent court of law.

The question as to whether it was competent for the Commission, to have entertained the complaint need not be decided finally in this writ petition. Except directing the custody of the child with respondents 2 and 3 orally, the Commission did not pass any order, either way, touching upon its jurisdiction or competence. The petitioners are yet to file the counter affidavit before the Commission. It shall be open to them to raise such objections as are available to them in law.

Admittedly, the custody of the child was with the petitioners till 29.3.2007. But for the steps taken by the Commission, it would not have been with respondents 2 and 3. It is not that any serious irregularity or illegality has taken place on account of restoration of the custody of the child to her natural parents. When passions have risen high between the parties, in a matter of this nature, either an agreed course of action or the one, which accords with principles of law, must be followed.

After hearing the learned counsel for the parties at length and after ascertaining the views of the petitioners and respondents 2 and 3, this Court is of the view that entrusting the custody of the child to the petitioners for part of the week and to respondents 2 and 3 for the other part would bring about a congenial atmosphere, apart from redressing the grievance of the petitioners about the unilateral entrustment of the

custody of the child to respondents 2 and 3.

For the foregoing reasons, the writ petition is disposed of directing that

a) the petitioners shall institute proceedings under the Hindu Adoptions and Maintenance Act, 1956 in a court of competent jurisdiction, by 30.4.2007.

b) From this week onwards, the child by name Vaishnavai shall be in the custody of the petitioners on Thursday, Friday, Saturday and Sunday and in the custody of respondents 2 and 3 on Monday, Tuesday and Wednesday of a week.

To ensure proper and smooth transfer of the child, it is directed that Smt.Annapurna W/o Chandraiah and Smt.Kamala W/o Yadagiri, the persons agreed to by the parties, shall hand over the custody of the child to the petitioners in the morning of every Thursday, between 8.00 a.m. and 9.00 a.m. Similarly, they shall hand over the custody of the child to respondents 2 and 3 on the morning of every Monday between 8.00 a.m. and 9.00 a.m.

c) This arrangement shall be pending adjudication of the rights of the parties in a proceeding, which the petitioners must institute. The court, in which the proceedings would be instituted by the petitioners, shall endeavour to dispose of the same within a period of three months from the date of institution and the parties shall cooperate with the same. In case the proceedings are not initiated before 30.4.2007, this arrangement shall cease and respondents 2 and

3 shall be entitled to have the custody of the child with them.

L.NARASIMHA REDDY,J

Dated 11.4.2007
msv